PTO Form 1960 (Rev 10/2011)
OMB No. 0651-0050 (Exp 07/31/2017)

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86374320
LAW OFFICE ASSIGNED	LAW OFFICE 117
MARK SECTION	
MARK	http://tmng-al.uspto.gov/resting2/api/img/86374320/large
LITERAL ELEMENT	SMARTCASK
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
ARGUMENT(S)	

The application is rejected on the ground of descriptiveness, and the application is further rejected on the ground that its identification of goods is indefinite and overbroad. Applicant supplies herewith an amended identification of goods that is submitted to overcome the rejection on the ground of descriptiveness and that is submitted to further be sufficiently definite.

Applicant regrets that the prior proposed identification of goods was drafted in such a fashion that some ambiguity arose therein with regard to specifically what the word "identify" was intended to refer. That is, the prior proposed identification of goods was "Shielded fuel containers, namely, casks for storing used nuclear fuel elements, with *sensors for monitoring one or more environmental parameters within the cask that identify a condition of the nuclear fuel* and wirelessly transmitting data outputs of the sensors to a remote receiver" (emphasis added). It is believed that the Trademark Examining Attorney (erroneously) understood the Italic text to mean that the "sensors" performed an "identify" function. However, what was intended was for the identification of goods to convey that the environmental parameters were usable (by a remote device, for instance) to derive or otherwise identify on that remote device a condition of the nuclear fuel. What was intended to be conveyed was that the sensors merely detect an environmental parameter, and that the detected environmental parameter is wirelessly transmitted to a remote receiver.

In order to alleviate such potential ambiguity, the identification of goods is amended herein to be "Non-metal fuel containers, namely, casks for storing used nuclear fuel elements, that include one or more sensors for monitoring one or more environmental parameters such as temperature and/or humidity and/or radiation level, and that wirelessly transmit data from the sensors to a remote receiver, also

contains metal liners". It is believed that this proposed identification of goods makes clear that the sensors do not perform any identification of an environmental parameter, and rather merely detect the environmental parameter. The detected environmental parameter is wirelessly transmitted to a remote receiver. This is intended to be very much in the way that a microphone detects an acoustic vibration and transmits an electronic representation of the detected vibration to another device.

The Trademark Examining Attorney has taken the position that the mark is merely descriptive of the goods and has alleged that the goods are "smart". In this regard, the Trademark Examining Attorney provided several definitions of the word "smart", such as "programmed so as to be capable of some independent action" and "Capable of making adjustments that resemble those resulting from human decisions, chiefly by means of electronic sensors and computer technology". The Trademark Examining Attorney also alleged that "As stated in the identification of goods, the goods are automated to monitor and identify parameters."

Applicant would respectfully point out, however, that the amended and clarified identification of goods does not recite something that employs computer technology or that is capable of being "programmed". Rather, the identification of goods recites a device that has sensors which detect an environmental parameter, and the device further wirelessly transmits the detected environmental parameter to a remote receiver. The amended identification of goods likewise does not recite something that is capable of making adjustments that resemble those resulting from human decisions, and rather describes a device that has sensors which detect an environmental parameter, with the device wirelessly transmitting the detected environmental parameter to a remote receiver. It is therefore submitted that the identification of goods demonstrates that the goods are not "smart" as has been alleged by the Trademark Examining Attorney, and it is thus submitted that the mark is not descriptive of the goods in this regard.

It is also submitted that the components SMART and CASK form an incongruous combination because the word SMART is a word having a somewhat modern connotation (despite the fact that the goods are not "smart") whereas the word CASK is in older word that suggests handcrafted storage containers that are made of wood or other such workable material. That is, even though the goods are not "smart" goods as that term has been identified by the Trademark Examining Attorney, the combination of a more contemporary word (SMART) with a more ancient word (CASK) is believed to be incongruous. This is particularly so when considered in light of the fact that no new nuclear power plants have been built in the United States in several decades and thus are themselves somewhat ancient but are still used today. As such, the combination of terms that make up the mark create a unique and incongruous combination that is nondescriptive in relation to the goods.

The Trademark Examining Atty. has requested information regarding the identification of goods, and applicant responds as follows:

"(1) Advise what parameters the casks are monitoring" -- Applicant responds by stating that any of a variety of parameters can be detected, such as temperature, radiation level, humidity, and the like, and would be any parameter from which a condition of the fuel can be derived (such as by a remote device).

"(2) Advise how the casks are monitoring these parameters (e.g., via electronic sensors, computer chips, etc.)" -- Applicant responds by noting that thermometers, Geiger counters, humidity detectors, and the like can be used, and they can be either "electronic" sensors or be of a mechanical nature. For example, a traditional mechanical humidity detector might employ two thermometers with one having a wet bulb and the other having a dry bulb, whereas an electronic humidity detector might employ a pair of spaced wires and an electronic circuit that detects the capacitance between the spaced wires and that derives

from the detected capacitance a humidity level in the air around the spaced wires. Either type of sensor is merely a sensor, and either type is usable in the goods in connection with which the market is intended to be used. Applicant has avoided limiting the sensors to be of an electronic nature since the identification of goods are not intended to describe a "smart" device.

"(3) Advise how the data is wirelessly transmitted (e.g., via a digital communication technology)" -- Applicant responds by stating that any type of wireless technology can be employed, such as with the use of an analog radio signal (such as AM or FM radio signal or a radio signal in another band operating as a carrier and having an analog data signal overlaid thereon) or could be in the nature of a digital radio signal (such as according to the 802.11 IEEE standard, which is understood to be an analog radio carrier signal in the gigahertz (gHz) range having digital data signal overlaid thereon). In short, any type of wireless communication technology, whether currently known or developed in the future, can be used, and the specific technology that is employed may depend upon the particular data parameter that is being communicated.

"(4) Advise whether the goods must be reset by a person each time one parameter is monitored and identified or whether the device performs the functions automatically" -- Applicant notes that the goods do not need to be reset each time a parameter is monitored. Applicant would further note that the only functions that are performed are to detect an environmental parameter and to wirelessly transmit the detected parameter to a remote receiver. Such detection and transmission occur continuously and on an ongoing basis, but Applicant would refrain from characterizing such continuous detection and transmission as being done "automatically" since that word suggests additional processing or operations which are not performed by the goods.

Applicant thanks the Trademark Examining Attorney for the proposed identification of goods. Applicant has chosen to amend the description to be in International Class 20. Applicant has largely adopted the proposed identification of goods but has refrained from characterizing the goods as employing "computer technology" and from characterizing the sensors as being "electronic" ands from saying that the goods operate "in an automated manner" for the reasons set forth above. That is, the goods do not perform any function on the detected environmental parameter other than to transmit the detected environmental parameter to a remote device. It is believed that the amended identification of goods presented herein is within the scope of the original identification of goods and is believed to be sufficiently definite to pass the application to allowance.

The application is thus believed to be in condition for allowance. The undersigned would welcome a telephone call if any matters remain unresolved.

GOODS AND/OR SERVICES SECTION (class deleted)

GOODS AND/OR SERVICES SECTION (class added) Original Class (011)

INTERNATIONAL CLASS	020

DESCRIPTION

Non-metal fuel containers, namely, casks for storing used nuclear fuel elements, that include one or more sensors for monitoring one or more environmental parameters such as temperature and/or humidity and/or radiation level, and that wirelessly transmit data from the sensors to a remote receiver, also contains metal liners

FILING BASIS	Section 1(b)

SIGNATURE SECTION	
RESPONSE SIGNATURE	/Brij K. Agarwal/
SIGNATORY'S NAME	Brij K. Agarwal
SIGNATORY'S POSITION	Attorney of record, Pennsylvania bar member
SIGNATORY'S PHONE NUMBER	412-566-6183
DATE SIGNED	12/14/2015
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Dec 14 16:08:20 EST 2015
TEAS STAMP	USPTO/RFR-XXX.XX.XXX.XXX- 20151214160820024641-8637 4320-550c6a84676acdcccb7f 1cf302f2a9b1ae2b51701c66f da09551aadbd046ac14f3-N/A -N/A-20151214140146281993

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **86374320** SMARTCASK(Standard Characters, see http://tmng-al.uspto.gov/resting2/api/img/86374320/large) has been amended as follows:

ARGUMENT(S)
In response to the substantive refusal(s), please note the following:

The application is rejected on the ground of descriptiveness, and the application is further rejected on the ground that its identification of goods is indefinite and overbroad. Applicant supplies herewith an amended identification of goods that is submitted to overcome the rejection on the ground of descriptiveness and that is submitted to further be sufficiently definite.

Applicant regrets that the prior proposed identification of goods was drafted in such a fashion that some ambiguity arose therein with regard to specifically what the word "identify" was intended to refer. That is, the prior proposed identification of goods was "Shielded fuel containers, namely, casks for storing used

nuclear fuel elements, with *sensors for monitoring one or more environmental parameters within the cask that identify a condition of the nuclear fuel* and wirelessly transmitting data outputs of the sensors to a remote receiver" (emphasis added). It is believed that the Trademark Examining Attorney (erroneously) understood the Italic text to mean that the "sensors" performed an "identify" function. However, what was intended was for the identification of goods to convey that the environmental parameters were usable (by a remote device, for instance) to derive or otherwise identify on that remote device a condition of the nuclear fuel. What was intended to be conveyed was that the sensors merely detect an environmental parameter, and that the detected environmental parameter is wirelessly transmitted to a remote receiver.

In order to alleviate such potential ambiguity, the identification of goods is amended herein to be "Non-metal fuel containers, namely, casks for storing used nuclear fuel elements, that include one or more sensors for monitoring one or more environmental parameters such as temperature and/or humidity and/or radiation level, and that wirelessly transmit data from the sensors to a remote receiver, also contains metal liners". It is believed that this proposed identification of goods makes clear that the sensors do not perform any identification of an environmental parameter, and rather merely detect the environmental parameter. The detected environmental parameter is wirelessly transmitted to a remote receiver. This is intended to be very much in the way that a microphone detects an acoustic vibration and transmits an electronic representation of the detected vibration to another device.

The Trademark Examining Attorney has taken the position that the mark is merely descriptive of the goods and has alleged that the goods are "smart". In this regard, the Trademark Examining Attorney provided several definitions of the word "smart", such as "programmed so as to be capable of some independent action" and "Capable of making adjustments that resemble those resulting from human decisions, chiefly by means of electronic sensors and computer technology". The Trademark Examining Attorney also alleged that "As stated in the identification of goods, the goods are automated to monitor and identify parameters."

Applicant would respectfully point out, however, that the amended and clarified identification of goods does not recite something that employs computer technology or that is capable of being "programmed". Rather, the identification of goods recites a device that has sensors which detect an environmental parameter, and the device further wirelessly transmits the detected environmental parameter to a remote receiver. The amended identification of goods likewise does not recite something that is capable of making adjustments that resemble those resulting from human decisions, and rather describes a device that has sensors which detect an environmental parameter, with the device wirelessly transmitting the detected environmental parameter to a remote receiver. It is therefore submitted that the identification of goods demonstrates that the goods are not "smart" as has been alleged by the Trademark Examining Attorney, and it is thus submitted that the mark is not descriptive of the goods in this regard.

It is also submitted that the components SMART and CASK form an incongruous combination because the word SMART is a word having a somewhat modern connotation (despite the fact that the goods are not "smart") whereas the word CASK is in older word that suggests handcrafted storage containers that are made of wood or other such workable material. That is, even though the goods are not "smart" goods as that term has been identified by the Trademark Examining Attorney, the combination of a more contemporary word (SMART) with a more ancient word (CASK) is believed to be incongruous. This is particularly so when considered in light of the fact that no new nuclear power plants have been built in the United States in several decades and thus are themselves somewhat ancient but are still used today. As such, the combination of terms that make up the mark create a unique and incongruous combination that is nondescriptive in relation to the goods.

The Trademark Examining Atty. has requested information regarding the identification of goods, and applicant responds as follows:

"(1) Advise what parameters the casks are monitoring" -- Applicant responds by stating that any of a variety of parameters can be detected, such as temperature, radiation level, humidity, and the like, and would be any parameter from which a condition of the fuel can be derived (such as by a remote device).

"(2) Advise how the casks are monitoring these parameters (e.g., via electronic sensors, computer chips, etc.)" -- Applicant responds by noting that thermometers, Geiger counters, humidity detectors, and the like can be used, and they can be either "electronic" sensors or be of a mechanical nature. For example, a traditional mechanical humidity detector might employ two thermometers with one having a wet bulb and the other having a dry bulb, whereas an electronic humidity detector might employ a pair of spaced wires and an electronic circuit that detects the capacitance between the spaced wires and that derives from the detected capacitance a humidity level in the air around the spaced wires. Either type of sensor is merely a sensor, and either type is usable in the goods in connection with which the market is intended to be used. Applicant has avoided limiting the sensors to be of an electronic nature since the identification of goods are not intended to describe a "smart" device.

"(3) Advise how the data is wirelessly transmitted (e.g., via a digital communication technology)" -- Applicant responds by stating that any type of wireless technology can be employed, such as with the use of an analog radio signal (such as AM or FM radio signal or a radio signal in another band operating as a carrier and having an analog data signal overlaid thereon) or could be in the nature of a digital radio signal (such as according to the 802.11 IEEE standard, which is understood to be an analog radio carrier signal in the gigahertz (gHz) range having digital data signal overlaid thereon). In short, any type of wireless communication technology, whether currently known or developed in the future, can be used, and the specific technology that is employed may depend upon the particular data parameter that is being communicated.

"(4) Advise whether the goods must be reset by a person each time one parameter is monitored and identified or whether the device performs the functions automatically" -- Applicant notes that the goods do not need to be reset each time a parameter is monitored. Applicant would further note that the only functions that are performed are to detect an environmental parameter and to wirelessly transmit the detected parameter to a remote receiver. Such detection and transmission occur continuously and on an ongoing basis, but Applicant would refrain from characterizing such continuous detection and transmission as being done "automatically" since that word suggests additional processing or operations which are not performed by the goods.

Applicant thanks the Trademark Examining Attorney for the proposed identification of goods. Applicant has chosen to amend the description to be in International Class 20. Applicant has largely adopted the proposed identification of goods but has refrained from characterizing the goods as employing "computer technology" and from characterizing the sensors as being "electronic" ands from saying that the goods operate "in an automated manner" for the reasons set forth above. That is, the goods do not perform any function on the detected environmental parameter other than to transmit the detected environmental parameter to a remote device. It is believed that the amended identification of goods presented herein is within the scope of the original identification of goods and is believed to be sufficiently definite to pass the application to allowance.

The application is thus believed to be in condition for allowance. The undersigned would welcome a telephone call if any matters remain unresolved.

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant hereby deletes the following class of goods/services from the application.

Class 011 for Shielded fuel containers, namely, casks for storing used nuclear fuel elements, with sensors for monitoring one or more environmental parameters within the cask that identify a condition of the nuclear fuel and wirelessly transmitting data outputs of the sensors to a remote receiver

Applicant hereby adds the following class of goods/services to the application:

New: Class 020 (Original Class: 011) for Non-metal fuel containers, namely, casks for storing used nuclear fuel elements, that include one or more sensors for monitoring one or more environmental parameters such as temperature and/or humidity and/or radiation level, and that wirelessly transmit data from the sensors to a remote receiver, also contains metal liners

Filing Basis: Section 1(b), Intent to Use: ***For a trademark or service mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. ***For a collective trademark, collective service mark, or collective membership mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. ***For a certification mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Brij K. Agarwal/ Date: 12/14/2015

Signatory's Name: Brij K. Agarwal

Signatory's Position: Attorney of record, Pennsylvania bar member

Signatory's Phone Number: 412-566-6183

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 86374320

Internet Transmission Date: Mon Dec 14 16:08:20 EST 2015
TEAS Stamp: USPTO/RFR-XXX.XX.XXX.XXX-201512141608200
24641-86374320-550c6a84676acdcccb7f1cf30
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